

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2018

CORAM

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
AND
THE HONOURABLE Mr. JUSTICE M.NIRMAL KUMAR

H.C.P. No. 1476 of 2018

V.Dhanalakshmi

...Petitioner

Vs

1.The Principal Secretary to Government (Home),
Prohibition Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Magistrate and
District Collector Tiruvallur,
Tiruvallur District.

...Respondents

PRAYER:Habeas Corpus Petition under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the records relating to Petitioner's Husband detention under Tamil Nadu Act 14 of 1982 vide detention order dated 20.06.2018 on the file of the Second Respondent herein made in proceedings No.19/BCDFGISSSV/2018 and quash the same as illegal and consequently direct the respondents herein to produce the said Petitioner's Husband namely N.VENKATESAN, S/o. Naineeyappan, aged about 53 years before this Hon'ble High Court and set the Petitioner's husband at liberty from detention now Petitioner's husband detained at Central Prison, Puzhal, Chennai - 600 066.

For Petitioner: Mr.T.Ravi

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

[Order of the Court was made by C.T.SELVAM, J.]

The petitioner, who is the wife of the detenu, namely, Venkatesan, Son of Naineeyappan, aged 52 years, challenges the impugned order of detention, dated 20.06.2018 in No.BCDFGISSSV

No.19/2018 detaining her husband as "Sand Offender", as contemplated under Section 2(gg) of the Tamil Nadu Prevention of dangerous activities of Boot leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982).

2. The detenu has come to adverse notice in the following case:-

S.No.	Police Station & Crime No.	Section of Law
1.	B4, Sevvapet Police Station Crime No.466/2017	36 (A) MMDR Act
2.	B4, Sevvapet Police Station Crime No.573/2017	379, 430 IPC
3.	B4, Sevvapet Police Station Crime No.637/2017	36(A) MMDR Act

The ground case has been registered against the detenu in Crime No.305/2018 on the file of the Inspector of Police, Sevvapet Police Station, for offences u/s 294(b), 353, 307, 379, 430 IPC r/w 21(1) M.M.D.R. Act. The detention order has been passed by Second respondent in No.BCDFGISSSV No.19/2018 on 20.06.2018.

3. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

4. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

5. The Grounds of Detention would reveal that a ground case was registered against him in Cr.No.305/2018 for the offences u/s. 294(b), 353, 307, 379, 430 IPC r/w 21(1) M.M.D.R. Act. Admittedly, the detenu has moved bail application in the ground case and the same is pending before the Principal District and Sessions Court, Tiruvallur, in CrI.M.P.No.2863/2018. Therefore, the probability of release of the detenu imminently does not arise. Hence, we are inclined to set aside the detention order. Though the detaining authority has made reliance on similar case, in which an accused was granted bail, the facts involved in those cases are different. The principle of similarity cannot be applied mechanically. Normally, bails are

granted based on the facts and circumstances of each case. Therefore, similar case plea, cannot be taken into consideration. Hence, there is no material to substantiate that there is real possibility of the detainee coming out on bail and the said order was passed without application of mind.

6. In the result, the Habeas Corpus Petition is allowed and the order of detention in No. BCDFGISSSV No.19/2018 dated 20.06.2018, passed by the second respondent is set aside. The detenu, namely, Venkatesan, Son of Naineyappan, aged 52 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Secretary to Government (Home),
Prohibition Excise Department,
Secretariat,
Chennai - 600 009.

2.The District Magistrate and
District Collector Tiruvallur,
Tiruvallur District.

3.The Superintendent,
Central Prison-II Puzhal, Chennai - 66.

4.The Joint Secretary to Government,
Public (Law and order) Department,
Secretariat, Chennai - 600 009.

5.The Public Prosecutor,
High Court, Madras.

H.C.P. No. 1476 of 2018

SV(CO)
GSP(26/12/2018)

WEB COPY